

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

<p>FILED</p> <p>March 24, 2000</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

ROBERT McPHERSON, JR.,)
)
 Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
 Appellee.)

NO. W1999-01011-CCA-R3-PC

DYER COUNTY No. C-98-41-43

HON. R. LEE MOORE, JR.,
JUDGE

(Post-Conviction)

AFFIRMED - RULE 20

ORDER

Appellant, ROBERT McPHERSON, JR., appeals the denial of his petition for post-conviction relief. Pursuant to a negotiated plea agreement, petitioner pled guilty on June 23, 1998, to two counts of robbery, a Class C felony, and one count of especially aggravated robbery, a Class A felony. He received Range III sentences of fifteen years for the robberies, and a Range I sentence of fifteen years for the especially aggravated robbery to be served at 100% pursuant to Tenn. Code Ann. § 40-35-501. All sentences were ordered to run concurrently.

In December 1998, petitioner filed a timely petition for post-conviction relief in which he claimed ineffective assistance of counsel resulted in an involuntary guilty plea. Specifically, petitioner claimed that trial counsel failed to adequately explain the negotiated plea process and that he would not have pled guilty had he understood the 100% service requirement relating to the especially aggravated robbery sentence in case number C98-42. Further, petitioner claimed that trial counsel failed to adequately investigate the injuries suffered by the victim of the especially aggravated robbery which he claimed were not sufficiently serious to support a conviction for the Class A felony.

On April 12, 1999, the post-conviction court conducted an evidentiary hearing. Trial counsel testified that petitioner was charged in three separate

indictments for three separate incidents. As a result, each indictment was set for trial in front of a different jury panel. At the time of the plea, counsel focused primarily on the first case set for trial, the simple robbery in case number C98-43.

With regard to the especially aggravated robbery victim's injuries, counsel received a preliminary description from his investigator and the state. Although he neither received nor investigated the victim's medical records, he believed the injuries serious enough to support the charged offense based upon his experience.

Counsel testified that he discussed the potential range of punishment for the charged offenses with petitioner. He advised petitioner of the violent offender provision relating to especially aggravated robbery and informed him it would require 100% service of the fifteen years.¹ Nevertheless, counsel testified he considered this to be a good option in light of a previous offer for an effective fifty-year sentence which would have made petitioner eligible for parole in approximately seventeen years with no guarantee of release.

Petitioner admitted in his evidentiary hearing testimony that counsel discussed the 100% service provision, but claimed that he neither understood the significance of that discussion, nor agreed to those terms. Nevertheless, a review of the guilty plea transcript reveals that when questioned by the trial court as to his understanding of the guilty plea, petitioner unequivocally stated his understanding and agreement. The trial court clearly addressed the 100% service issue and gave petitioner ample opportunity to express any misunderstanding or dissatisfaction with the plea agreement or its terms. Petitioner voiced none.

The post-conviction judge conducted a full evidentiary hearing and placed his findings in the record. He found petitioner was given the opportunity to confer with a good, experienced criminal defense attorney who developed a plan to address

¹However, counsel acknowledged an apparent lack of agreement by petitioner who continued in an assertion that he could be eligible for parole in eight or nine years on the fifteen year sentence.

three serious cases against petitioner. The post-conviction judge noted that the proof revealed nothing which would have altered the petitioner's decision to plead guilty.

The evidence does not preponderate against the post-conviction court's finding that petitioner entered his plea knowingly, voluntarily and understandingly. Therefore, the judgment of the trial court dismissing the petition for post-conviction relief is **AFFIRMED** pursuant to Rule 20, Tennessee Court of Criminal Appeals.

It appearing that the appellant is indigent, costs shall be taxed to the state.

So ordered. Enter:

JOE G. RILEY, JUDGE

CONCUR:

JOHN EVERETT WILLIAMS, JUDGE

ALAN E. GLENN, JUDGE